

regulations. However, a motor vehicle or engine will not be disposed of in a manner in which it may ultimately either directly or indirectly reach a consumer in a condition in which it is not in conformity with applicable EPA emission requirements.

(m) *Prohibited importations.* The importation of motor vehicles otherwise than in accordance with this section and the regulations of EPA in 40 CFR parts 80, 85, 86 and 600 is prohibited.

[T.D. 88–40, 53 FR 26240, July 12, 1988]

**§ 12.74 Nonroad engine compliance with Federal antipollution emission requirements.**

(a) *Applicability of EPA requirements.* This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and found in 40 CFR parts 89 and 90. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations. Those regulations should be consulted for more detailed information concerning EPA emission requirements. These requirements apply to nonroad combustion-ignition engines at or above 37 kilowatts (kW), and nonroad spark-ignition engines at or below 19 kW. For the purpose of this section, the term “nonroad engine” includes all nonroad engines incorporated into nonroad equipment or nonroad vehicles when imported into the United States.

(b) *Importation of complying nonroad engines—(1) Labeled engines.* Nonroad engines which in their condition as imported are covered by an EPA certificate of conformity and which bear the manufacturer’s label showing such conformity and other EPA-required information shall be deemed in compliance with applicable emission requirements for the purpose of Customs admissibility and entry liquidation determinations. This paragraph does not apply to importations by independent commercial importers covered by paragraph (c) of this section.

(2) *Pending certification.* Nonroad engines otherwise covered by paragraph (b)(1) of this section which were manufactured for compliance with applicable emission requirements, but for

which an application for a certificate of conformity is pending with the EPA may be conditionally released from Customs custody pending production of the certificate of conformity within 120 days of release.

(c) *Importation of nonconforming engines—(1) By other than an independent commercial importer (ICI).* Except for nonroad engines imported in the particular circumstances covered by paragraphs (d)–(m) of this section, an individual or business, other than an independent commercial importer (ICI) holding a currently valid EPA certificate of conformity for the same nonroad engine class and fuel type as the engine being imported, may not enter into the United States a nonconforming nonroad engine to which EPA emissions requirements apply. Individuals and businesses may, however, arrange for the importation of nonconforming nonroad engines through an ICI. In these circumstances, the ICI will not act as an agent or broker for Customs transaction purposes unless otherwise licensed or authorized to do so.

(2) *By an ICI—(i) Definition.* Generally, an ICI is an importer that holds a certificate of conformity from EPA, but that lacks a contract with a foreign or domestic nonroad engine manufacturer for distributing nonroad engines into the United States market and cannot therefore export as an original equipment manufacturer. Further specific discussion of who qualifies as an ICI is set forth in the EPA regulations.

(ii) *Procedure.* An ICI may enter into the United States certain nonroad engines, only if it holds a currently valid EPA certificate of conformity for the same nonroad engine class and fuel type as the nonroad engines being entered. A “certificate of conformity” is the document which is issued by the Administrator, EPA, to the ICI, and which entitles the ICI to import nonconforming nonroad engines into the United States, and ensure that such nonroad engines are brought into conformance with applicable EPA emissions standards. 40 CFR 89.602–96.

(d) *Importation of nonconforming spark-ignition engines at or below 19*

kW—(1) *General.* A nonconforming engine at or below 19 kW may not be imported by any person, business or ICI, except for purposes other than resale under paragraph (d)(2) of this section, or unless an exemption or exclusion applies as provided in paragraphs (e)–(m) of this section.

(2) *Importation for purposes other than resale.* Any individual may import on a one-time basis 3 or fewer nonconforming spark-ignition engines at or below 19 kW for purposes other than resale under 40 CFR 90.611. Such an engine may be conditionally admitted without prior EPA approval and without bond.

(e) *Exemptions and exclusions from emissions requirements based on age of engine.* The following nonroad engines may be imported by any person and do not have to be shown to be in compliance with emissions requirements before being entitled to admissibility:

(1) All spark-ignition engines greater than 19 kW, unless regulated under 19 CFR 12.73;

(2) All compression-ignition engines less than 37 kW;

(3) Spark-ignition engines less than or equal to 19 kW originally manufactured before the 1997 model year;

(4) Compression-ignition engines greater than or equal to 37 kW but less than 75 kW originally manufactured before January 1, 1998;

(5) Compression-ignition engines greater than or equal to 75 kW but less than 130 kW originally manufactured before January 1, 1997;

(6) Compression-ignition engines greater than or equal to 130 kW but less than or equal to 560 kW originally manufactured before January 1, 1996;

(7) Compression-ignition engines greater than 560 kW originally manufactured before January 1, 2000; and

(8) Engines not otherwise exempt from EPA emission requirements and more than 20 years old. (Age is determined by subtracting the calendar year of production (as opposed to model year) from the calendar year of importation.)

(f) *Exemption for exports.* Nonroad engines which will be used in nonroad vehicles or equipment intended solely for export to a country which does not have in force emissions standards identical to EPA standards are exempt

from applicable EPA emissions requirements if both the engine and its container bear a label or tag indicating that it is intended solely for export. 40 CFR 89.909 and 90.909. The EPA publishes in the FEDERAL REGISTER a list of foreign countries that have emissions standards identical to EPA standards.

(g) *Exemptions for diplomats, foreign military personnel and nonresidents.* Subject to the conditions that they are not resold in the United States and are subsequently exported or destroyed or brought into conformity with EPA emissions requirements, the following nonroad engines are exempt from EPA emission requirements:

(1) A nonroad engine imported solely for the personal use of a nonresident importer or consignee where the use will not exceed one year and the engine subsequently will be exported; and

(2) A nonroad engine of a member of the armed forces of a foreign country on assignment in the United States, or of a member of the personnel of a foreign government on assignment in the United States or other individual who comes within the class of persons for whom free entry of nonroad engines has been authorized by the Department of State. For special documentation requirements, see paragraph (n)(4) of this section.

(h) *Exemption for repairs or alterations.* An engine may be imported by anyone solely for repairs or alterations. Under this exemption, the engine may not be sold or leased in the United States. 40 CFR 89.611–96(b)(1) and 90.612(b)(1).

(i) *Testing exemption.* An engine may be imported by anyone solely for testing. Such engine may only be operated as an integral part of the test. 40 CFR 89.611–96(b)(2) and 90.612(b)(2). This exemption is limited to a period not exceeding one year from the date of importation unless a request is made under 40 CFR 89.905(f) or 90.905(f), as applicable, for a one-year extension.

(j) *Precertification exemption.* An engine may be imported by an individual as well as by an ICI for use as a prototype in applying for EPA certification, unless otherwise specified. 40 CFR 89.611–96(b)(3) and 89.906. Unless the engine is brought into conformity within 180 days from the date of entry, it shall

be exported or otherwise disposed of subject to paragraph (q) of this section.

(k) *Display exemption.* An engine may be imported by anyone solely for display in relation to a business or the public interest, as determined by EPA, if the engine will not be sold in the United States. This exemption is limited to a period of 12 months or for the duration of the display, whichever is shorter. Two extensions are available of up to 12 months each, if approved by EPA, but, in no case may the total extension period exceed 36 months. 40 CFR 89.611–96(b)(4) and 90.612(b)(3).

(l) *Exemption for engines identical to U.S.-certified versions.* An engine may be imported by its owner other than for resale if it is proven to be identical, in all material respects, to an engine certified by the original manufacturer for sale in the United States. 40 CFR 89.611–96(c)(3) and 90.612(c)(3).

(m) *Exemptions and exclusions based on prior EPA approval.* The following exemptions or exclusions from EPA emission standards apply to nonroad engines, if prior approval has been obtained in writing from EPA:

(1) *Competition exemption.* An engine may be imported for use to propel a vehicle or to power equipment used solely for competition. 40 CFR 89.611–96(e) and 90.612(e);

(2) *National security exemption.* An engine that received a national security exemption in writing from EPA may be imported. 40 CFR 89.611–96(c)(1), 89.908, 90.612(c)(1) and 90.908; and

(3) *Hardship exemption.* An engine that received a hardship exemption in writing from EPA may be imported. 40 CFR 89.911–96(c)(2) and 90.612(c)(2).

(n) *Documentation requirements.*—(1) *Exception for conforming engines.* The special documentation requirements of paragraphs (n)(2) and (n)(3) of this section do not apply to the entry into the United States of any nonroad engines shown to be in compliance with applicable emission requirements under paragraph (b)(1) of this section relating to labeling.

(2) *Declarations of other importers.* Release from Customs custody shall be refused with respect to all entries of nonconforming nonroad engines into the United States unless there is filed with the entry in duplicate a declaration in

which the importer or consignee declares or affirms its status as an original equipment manufacturer, an ICI holding a relevant certificate of conformity, an individual importer, or other status, and further declares or affirms the status or condition of the imported engines and the circumstances concerning importation including a citation to the specific paragraph in this section upon which application for conditional or final release from Customs custody is made.

(3) *Other documentation and information.* The EPA requires, pursuant to its regulations at 40 CFR 89.604(a) and 40 CFR 90.604(c), that the following information shall be included or submitted with the importer's declaration:

(i) The importer's name, address and telephone number;

(ii) Identification of the engine, including the unique engine number, the engine owner's taxpayer identification number, and his or her current address and telephone number in the United States if different from that provided in paragraph (n)(3)(i) of this section;

(iii) Identification, where applicable, of the place where the engine will be stored until EPA approval of the importer's application to EPA for final admission;

(iv) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Clean Air Act and regulations promulgated thereunder;

(v) Identification, in the case of importation by an ICI, of the certificate of conformity by means of which the engine is being imported;

(vi) The date of manufacture of the engine;

(vii) The date of entry;

(viii) Identification of the vessel or carrier on which the merchandise was shipped;

(ix) The entry number, where applicable;

(x) Where prior written approval from EPA is required for an exemption or exclusion, a statement to the effect that such EPA approval has been given; and

(xi) Such other further information as may be required by the EPA.

(4) *Documentation from diplomats or foreign military personnel.* For entries

for which an exemption is claimed under paragraph (g)(2) of this section, a statement must also be included with the declaration, identifying and describing the engine importer's official orders, if any, or, giving the name of the embassy to which the importer is accredited if the importer is a qualifying member of the personnel of a foreign government on assignment in the United States.

(5) *Retention and submission of records to Customs.* Documents supporting the information contained in or accompanying the declaration as set forth in paragraphs (n) (2)–(4) of this section must be retained by the importer for a period of at least 5 years from the date of entry, or withdrawal from warehouse, for consumption of the nonroad engine (see §162.1c of this chapter), and shall be provided to Customs upon request.

(o) *Release under bond.* If a declaration filed in accordance with paragraph (n)(2) of this section states that the entry is being filed under circumstances described in either paragraph (h), (i), (j), or (k) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter for the production of an EPA statement that the engine is in conformity with Federal emission requirements. Within the period in paragraph (i) or (j) of this section, or in the case of paragraph (h) or (k) of this section, the period specified by EPA in its authorization for an exemption, or such additional period as the port director of Customs may allow for good cause shown, the importer or consignee shall deliver to the port director the prescribed statement. If the statement is not delivered to the director of the port of entry within the specified period, the importer or consignee shall deliver or cause to be delivered to the port director those engines which were released under a bond required by this paragraph. In the event that the engine is not redelivered within 5 days following the specified period, liquidated damages shall be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, the amount that would have been

taken under a single entry bond. Liquidated damages under the bond generally would be equal to 3 times the value of the merchandise involved in the default (see §113.62(k) of this chapter).

(p) *Notice of inadmissibility or detention.* If an engine is determined to be inadmissible before release from Customs custody, or inadmissible after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, if an engine cannot be released from Customs custody merely because the importer has failed to furnish with the entry the information required by paragraph (n) of this section, the engine shall be held in detention by the port director for a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing information. An additional 30-day extension may be granted by the port director upon application for good cause shown. If at the expiration of a period not over 60 days the required documentation has not been filed, a notice of inadmissibility will be issued.

(q) *Disposal of engines not entitled to admission.* An engine denied admission under any provision of this section shall be disposed of in accordance with applicable Customs laws and regulations. However, an engine will not be disposed of in a manner in which it may ultimately either directly or indirectly reach a consumer in a condition in which it is not in conformity with applicable EPA emission requirements.

(r) *Prohibited importations.* The importation of nonroad engines otherwise than in accordance with this section and the regulations of EPA in 40 CFR parts 89 and 90 is prohibited.

[T.D. 96-64, 61 FR 43961, Aug. 27, 1996]

MOTOR VEHICLES AND MOTOR VEHICLE  
EQUIPMENT MANUFACTURED ON OR  
AFTER JANUARY 1, 1968

**§ 12.80 Federal motor vehicle safety standards.**

(a) *Standards prescribed by the Department of Transportation.* Motor vehicles